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O'Rourke, C., & Swaine, A. (2017). Gender, violence and reparations in Northern Ireland: a story yet to be told. *International Journal of Human Rights*, 21(9), 1302-1319. <https://doi.org/10.1080/13642987.2017.1360029>

[Link to publication record in Ulster University Research Portal](#)

Published in:
International Journal of Human Rights

Publication Status:
Published (in print/issue): 21/08/2017

DOI:
[10.1080/13642987.2017.1360029](https://doi.org/10.1080/13642987.2017.1360029)

Document Version
Author Accepted version

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Gender, violence and reparations in Northern Ireland:

A story yet to be told

Catherine O'Rourke and Aisling Swaine*

Abstract

Both reparations and conflict-related sexual violence (CRSV) have been marginal to the story of the Northern Ireland transition from conflict. CRSV has received little formal acknowledgement, reflecting more fundamental gender-blindness in harm documentation and transitional justice in the jurisdiction. Likewise, reparations provision has been scant and piecemeal. The article documents the highly partial and deeply inadequate approach to reparations for CRSV in Northern Ireland throughout and after the conflict. We contend that the inadequacies of this approach have been so deficient as to in fact obscure – rather than illuminate – the manifestation of CRSV in the jurisdiction, thus undercutting an essential basis for effective reparations design and delivery in the future. The article ameliorates the identified absence of documentation and understanding of gendered harm in Northern Ireland, by offering a preliminary mapping of CRSV in the conflict. The article concludes that a transformative approach to reparations for CRSV in Northern Ireland would be one that advances recognition of both gender analysis and reparations as essential components of post-conflict justice in the jurisdiction.

Introduction

Both reparations and conflict-related sexual violence (CRSV) are issues that remain marginal to the Northern Ireland transition from conflict. CRSV has received little formal acknowledgement, while reparations provision has been scant and piecemeal. The deficiencies of the Northern Irish case are best understood in terms of three

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mutually-reinforcing dynamics. Firstly, official transitional justice initiatives give no formal status to gender as a factor in shaping one's experience of conflict or in determining appropriate responses to victimhood. Secondly, and consequently, the official process is deeply partial in both its documentation and understanding of gendered harm. Thirdly, state acknowledgement of the obligation to make reparation to victims and survivors is effectively absent. These factors combine to ensure that at no time has CRSV been specifically investigated or prioritized for reparations, with the practical effect of its systematic under-documentation. Against such a backdrop, it is difficult to articulate transformative ambitions for reparations for CRSV in the jurisdiction.

The article's contribution is threefold. Firstly, it contributes to contemporary debates about the conceptual and practical boundaries of transformative reparations. We contend that transformative reparations for CRSV can only proceed through a deeply contextual approach to determining what constitutes harm and repair in any particular setting. Secondly, we illuminate the importance of investigating complex manifestations of CRSV, in particular within the private sphere, in order to broaden our understanding of the phenomenon. Thirdly, we offer original analysis of the Northern Ireland transition, for which the incidence of CRSV and the gendered reparative components of transitional justice remain markedly under-examined.

The article is structured to make evident these contributions. The first section sets out the core definitional tensions inherent to any discussion of CRSV and transformative reparations. The second section then documents the highly partial and deeply inadequate approach to reparations for CRSV in Northern Ireland throughout and after the conflict. Crucially, we conclude, the inadequacies of this approach have been so deficient as to in fact obscure – rather than illuminate – the nature, manifestation and extent of CRSV in the jurisdiction. The third section therefore draws on original empirical research to set out an indicative mapping of the forms of CRSV that may be identified for repair in any future reparations process. Rather than providing this data as merely context-setting for this article, we are addressing a gap in the state's documentation of women's experiences of the conflict and their entitlement to reparation. This is the article's response to ameliorating the absence of documentation and understanding of gendered harm for the jurisdiction identified in the second section. We believe it offers a productive basis for further reparations planning as

transitional justice efforts in Northern Ireland advance. The article concludes that a transformative approach to reparations for CRSV in Northern Ireland would be one that advances recognition of both gender analysis and reparations as essential components of post-conflict justice in the jurisdiction.

Transformative Reparations and Conflict-Related Sexual Violence in Northern Ireland: Background and Definitions

Conflict-Related Sexual Violence

An ‘over-arching storyline’ that frames CRSV as only or solely constituting ‘strategic rape’ has driven contemporary global attention to the issue.¹ First officially documented as taking place in systematic ways in the wars of the former Yugoslavia, it is now recognised that parties to armed conflict may deliberately use sexual violence with ‘strategic’ intent. The ‘weapon of war’ framing that has emerged in response has done much to amend historical gaps in policy attention to CRSV. This limited construction has also however become a ‘pre-established framework for describing wartime rape in all settings’,² cultivating a universalised meaning that may not reflect the empirical reality of conflict-related violence for all women. While strategic rape may characterise many women’s experiences in war globally and it unquestionably warrants attention, broader forms of sexual and gendered harms also occur that may not always take place on a designated ‘weapon of war’ basis.³

In addition, the implied meaning of the term ‘strategic rape’, understood broadly here as its deliberate use on a systematic basis against civilians within armed attacks, fails to capture the myriad ways that specific acts of violence may be ‘strategic’ in their form, function and contextual meaning. The use of violence as a utilitarian and strategic element of security responses by the state, for example within its security and detention facilities, may be overlooked if an understanding of ‘strategic’ is conflated with the ‘weapon of war’ framing. A broad range of harms that may be also be ‘strategic’ in nature for multifarious reasons will be overlooked if examined through that predominant ‘weapon of war’ lens. Northern Ireland is a context that contests that principal narrative. Even in the absence of so-called ‘strategic rape’ as part of armed group tactics, broader sexual harms that were directly and indirectly related to the conflict took place.⁴ Like many conflict-affected contexts globally,

under-documentation of CRSV has been a critical barrier to the visibility of these forms of harm in this context and has led to gaps in accountability.

In order to begin to reflect on reparation for the ways that CRSV took place in the Northern Ireland conflict, we find useful the broad definition of CRSV adopted by the UN system, which acknowledges that sexual harm may be directly or indirectly linked to the conflict:

Conflict-related sexual violence refers to incidents or patterns of sexual violence against women, men, girls or boys occurring in a conflict or post-conflict setting that have direct *or indirect links* with the conflict itself or that occur in other situations of concern such as in the context of political repression [emphasis added].⁵

How acts of harm become defined as conflict-related and thereby ‘count’ for post-conflict justice remains an evolving debate.⁶ In the departure that Northern Ireland offers to the increasingly universalised notion of CRSV, there arises the challenge of evidencing harm commensurate with formal thresholds required for accountability. We therefore make the case for the need for documentation of CRSV that takes a context-specific approach and that investigates and promotes understanding of conventionally conceived ‘direct’ as well as contextually specific ‘indirect links’ between conflict and women’s experiences of harm. The documentation of CRSV specific to context will have a two-fold effect: firstly, it will ensure that broad and variant forms of gendered harm along a spectrum of public to private are made visible; and secondly, a fulsome account of CRSV, which acknowledges the impact of harms and their gendered and political context, provides an essential basis for advancing reparations design and delivery. It will also mean that approaches to reparation will be unencumbered by a perceived need to focus on the ‘exceptionalism’ that narrow conceptions of strategic rape presents. Rather reparation is advanced through making broader forms of gendered and sexual harm visible and by responding to its complexity and the contextually-specific ways that such harms occur. Relatedly, this also means acknowledging the gendered basis of conflict-related harm and of reparation, which we elucidate further in the next section.

Transformative Reparations

Gender-blindness in prevailing approaches to accountability and reparations is well

documented. It manifests in both global legal and policy documents, as well as in operative programming. One of the significant responses to addressing gaps and resulting impunity for CRSV has been the call by gender justice actors for the adoption of a ‘transformative’ approach to reparations. This has been reflected in the Security Council Resolutions on women, peace and security⁷ and advocated forcefully in the 2007 civil society initiative, the Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation. Further, The UN Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence observes that ‘reparations have the potential to be transformative . . . in overcoming structures of inequality and discrimination’ and that this potential should inform their ‘design, implementation and impact’.⁸ It is widely-acknowledged, however, that the specific design and contours of a transformative approach remain unclear.⁹

Elsewhere, we have argued that a transformative approach to reparations for CRSV requires responding to both the immediate reparative needs of survivors, as well as the broader social and economic barriers to full equality for women.¹⁰ This position is consistent with an established train of gender work in reparations, which has identified the potential for reparation to be ‘modest projects of transformation’. This latter objective can be achieved by, firstly, avoiding overtly discriminatory measures; secondly, ensuring that patriarchal values do not ‘leak into’ reparations delivery; and thirdly, by optimising the ‘modest’ potential of reparations to subvert prevailing discriminatory norms.¹¹ Walker casts these objectives as reflecting an obligation for reparations delivery to respect human rights based prohibition on discrimination.¹² Moving away from these more modest orientations, initiatives such as the Nairobi Declaration ‘imply remodeling society with a view to eliminating the pre-existing structural inequalities that have led to or encouraged violence against women’.¹³ The structurally transformative conception has been criticized, however, on grounds of practical realism and political feasibility. Further, it is said, the ‘transformative’ agenda threatens to displace reparative justice as a distinctly victim-centered ideal in favor of a different kind of (redistributive) justice agenda.¹⁴

We eschew any taking-of-sides in this important, though somewhat fractious, academic debate between modest and transformative reparations. Rather, we seek to draw from our own empirical, comparative, case-study driven work on gender-based

violence and transitional justice in particular settings¹⁵ to argue that any assessment and understanding of ‘transformation’ can only be articulated with reference to the local political context of gender, violence and transitional justice. To this end, we find merit in the ‘from below’ body of scholarly literature on transitional justice that seeks to re-orient the field away from standardized institutional responses and towards the (admittedly diverse) concerns and priorities of victims.¹⁶ O’Rourke, for example, has advocated for an investigation and understanding of the ‘local fit’ in transitional justice, whereby international obligations and practice are internalized and mediated through the domestic political structures and actors.¹⁷

In all, just as CRSV will manifest in different ways in different settings, ‘transformation’ and gender justice will look differently in different settings. Any outline of transformative reparations must therefore be devised with an assessment and understanding of the context in which ‘transformation’, or indeed reparations, are being attempted. In a context such as Northern Ireland, in which reparative justice has been so consistently denied to all victims, and knowledge of sexual violence in the conflict is so partial, a formal process of reparations that acknowledges and seeks to repair the gendered harm could in itself be deeply transformative for the many women affected by the conflict.

Gender, Violence and Transitional Justice in Northern Ireland

Between 1968 and 1998, political violence across Britain and Ireland by a range of Republican armed groups (whose aim was a United Ireland), Loyalist armed groups (determined to keep Northern Ireland in the United Kingdom), and members of various British security, military and policing forces claimed between an estimated 3,260 and 3,600 lives and the injury of more than 40,000 people.¹⁸ The guerrilla nature of paramilitary violence meant that its perpetrators were deeply embedded within their respective communities, resulting in a high degree of community influence and control. Moreover, a policy of ‘criminalisation’ was adopted by the British government, positing the police as the state’s front line response to paramilitary violence. Police raids seeking paramilitary actors typically involved the invasion of private family homes, often in hostile communities. Further, the incredibly large prison population arising from the criminalisation policy meant that

prisons were a routine part of life for many living in the jurisdiction. The deeply gendered aspects of this pattern of conflict, violence and harm remain under-explored and under-documented.

The major peace agreement of 1998 (the ‘Good Friday’ or ‘Belfast’ Agreement¹⁹) was silent on transitional justice.²⁰ Further, by international standards, the official transitional justice initiatives that have been adopted in Northern Ireland are particularly poor on incorporating concerns about gender justice. Abortive talks and proposals to deal with post-conflict justice issues have been in motion since the 2008 establishment of the Consultative Group to Deal with the Past.²¹ The Stormont House Agreement (SHA) of December 2014 was a watershed moment as it provided for a number of bespoke transitional justice mechanisms.²² The SHA also, however, lacked comprehensive commitments on reparations and is characterized by silence on gender.²³

Reparations for Conflict-Related Sexual Violence in Northern Ireland: Obscuring the Problem

A unique feature of the Northern Ireland context has been the ongoing role played by the criminal justice system. It is oft-noted that throughout the conflict the criminal justice system continued to operate in Northern Ireland, although ‘tweaked’ by emergency legislation which permitted juryless courts, inferences from silence and a highly militarised role for the police.²⁴ The reliance on the criminal justice system, as opposed to more flexible transitional justice measures, has also undercut the potential for more innovative reparations for CRSV unhindered by the manifold procedural and evidentiary obstacles it poses.²⁵ Further, the criminal justice approach has systematically under-documented CRSV, a fact that continues to pose substantial obstacles to any eventual effort to deliver reparations.

Writing on the Northern Ireland situation, the UN’s Special Rapporteur on Justice, Truth, Reparations and Guarantees of Non-Recurrence concluded in 2016:

The area of least achievement in the context of Northern Ireland remains reparations, despite various programmes to assist victims;²⁶

This problem was especially acute for victims of CRSV. The following discussion identifies two broad approaches to reparations for conflict harms in the Northern

Ireland case: the first, which prevailed during the conflict, was to conflate CRSV and non-conflict-related sexual violence and deal with both through a criminal injuries compensation model, making CRSV largely invisible. The second, which emerged after the peace agreement in 1998, was an approach that was highly partial and ad hoc, and premised on a voluntary and welfarist approach of the state. This approach is to be distinguished from a rights-based approach, whereby the state recognises and fulfils its obligation to make reparation to victims.²⁷ This latter approach has offered some formal modest progress to victims of CRSV, but little in terms of documentation and acknowledgment of broader patterns of CRSV. In Northern Ireland, the combination of a criminal compensation model with a welfarist approach have combined to systematically under-document CRSV in Northern Ireland and to obscure broader gender patterns of harm in the conflict.

Reparations during the Conflict: Conflating Conflict and Non-Conflict Related Sexual Violence (1968-1998)

The ostensible maintenance of the ‘normal’ criminal justice system achieved a number of diverse aims for the successive British governments. Firstly, it avoided the reputational damage associated with a modern developed nation confronting armed conflict within its own borders. Secondly, it effectively eschewed many important elements of international legal scrutiny normally attendant to the state’s conduct of non-international armed conflict. Thirdly, it helped to ‘Ulsterise’ the conflict, presenting the violence as local Northern Ireland conflagration and not a more fundamental challenge to the legitimacy and borders of the United Kingdom.²⁸ In practical terms, the broad implications for reparations of this ‘criminalisation’ approach was to preclude any formal distinction between injury resulting from conflict violence and criminal injury that was unconnected to the conflict.

The reliance on the criminal justice system to meet the accountability and reparative needs of victims during and post conflict presented manifold deficiencies. Reparations to CRSV victims during the conflict proceeded through a criminal injuries compensation model. The gendered deficiencies of this approach went well-beyond the specific situation of victims of CRSV to determine a system that structurally limited any prospect of a transformative approach to reparations. In general terms, the key gendered deficiency of the criminal injury compensation model was, in the initial phase (1968-1978) to privilege discretionary and judge-led delivery of reparations, in

which the leakage of patriarchal values was clear. Compensation amounts awarded were based on loss of income, rather than an assessment of harm. Given striking gendered inequalities in earnings, this approach functioned to systematically give lesser value to the loss of women's lives. Moreover, 'compensation payments were only for loss of earnings with no consideration of the emotional pain of bereavement.'²⁹ Relatives of those killed in the 1970s were awarded only a few hundred pounds.³⁰ In a recent consultation with women bereaved by the state and non-state killings during the conflict, the operation of these 'compensation courts' under a judge-led common law model at the early part of the conflict was identified as the cause of particular hurt and harm.³¹ Women recounted experiences of at times offensive, compensation awards, proving insufficient for the delivery of reparations specifically to victims of CRSV.

Despite several decades of attempted legal reform, the contemporary criminal justice remains deeply inadequate in response to the experiences of victims of sexual violence. The deficiencies of the historical response of the criminal justice system to victims of sexual violence as prevailed through the Northern Ireland conflict is therefore all the more apparent. Widespread under-reporting of sexual violence was further compounded by the specific legitimacy and operational deficiencies of the police force in this era. Overwhelmingly Protestant in composition, highly militarised in nature, and largely un-concerned with so-called 'private violence', the Royal Ulster Constabulary was peculiarly ill-equipped to provide an appropriate and comprehensive response to sexual violence occurring during the conflict to all victims. Such problems were compounded by the broad alienation of the Catholic-Nationalist community from the police. Additional obstacles to reporting such violence when it was connected to the conflict – in particular, fear of violent retaliation by perpetrators and the fact of direct state involvement in the perpetration of some sexual violence – posed a significant dampening effect on the formal reporting of sexual violence to the criminal justice system during the conflict.

The most pronounced and problematic elements of the criminal injury approach to reparations delivery for victims of CRSV during the conflict are as follows:

Firstly, the introduction of a criminal injury compensation scheme in 1978, with the continued possibility to appeal awards in the courts, reduced the role of judges in delivering compensation and introduced greater consistency in the awards, but

problems persisted around the leakage of patriarchal values – in particular concerning the financial assessment of harm resulting from the loss of children and female relatives – into the exercise of judicial discretion.

Secondly, the exclusions of the criminal injury compensation scheme operated highly-iniquitously with respect to many, including victims of sexual violence.³² Under the compensation scheme, no claim could be made if the assailant was a member of the same household,³³ with obvious consequences for the sexual violence perpetrated by a family member. Even in the context of sexual violence perpetrated within the family, the nexus to conflict was often apparent. Perpetrators who were also members of state or non-state armed groups used their militarised status and possession of weapons to victimise family members. Moreover, victims who were members of ‘unlawful associations’ were entirely excluded from criminal injury compensation, *irrespective* of the circumstances of the criminal injury.³⁴

Thirdly, the ‘threat’ of violence did not entitle the victim to criminal injury compensation. Given the prominent place of threats of sexual violence within documented cases of CRSV in Northern Ireland (see below), this provision effectively excluded many victims and survivors.

Fourthly, a rigid time-limit of three years for applying for compensation pertained to all victims. This excluded many, including those for whom the full scale and impact of injuries only became clear in the longer-term. Given the acknowledged longer timeframe attached to victims of sexual violence coming forward, it is fair to surmise that it operated in a particularly exclusionary manner for CRSV, a fact acknowledged by the Northern Ireland Affairs Committee of the Westminster parliament.³⁵

Fifthly, victims who were injured continued to face their compensation being cut after 16 years, despite their deteriorating health and increasing dependency as they became older.³⁶ In addition, victims’ life expectancy was underestimated and, as they were unable to work as result of their injuries, the compensation awarded prevented their substantive state benefit allowances.³⁷

Finally, the ‘fail[ure] to co-operate with the police in bringing the offender to justice’³⁸ was a ground for exclusion from the scheme. The manifold obstacles to victims of sexual violence reporting their experiences and engaging with the police

meant that this provision was particularly pernicious in working against victims and survivors of CRSV.

The combined effect of the criminal justice approach to reparations was to structurally exclude many of the victims experiencing CRSV, such as members of armed groups who experienced state-perpetrated sexual violence and victims of intra-household sexual violence perpetrated by armed actors. Further, the criminal justice approach functioned to systematically under-document CRSV during the conflict, a fact that continues to pose substantial obstacle to any eventual effort to deliver reparations to victims of CRSV in Northern Ireland. Ultimately, it may be concluded, the inadequate, partial and exclusionary delivery of reparations during the conflict functioned more often to compound, rather than to alleviate, harm. Further, it functioned to obscure, rather than illuminate, how CRSV manifested in Northern Ireland.

Reparations Post-Conflict: The Emergence of Specific Reparations to Conflict Victims

The effect of the nascent attention to conflict harm and reparation following the 1998 peace agreement was to introduce a clearer distinction between harms that were ‘counted’ as conflict-related harm and those ostensibly unrelated to the conflict. The legacy of long-standing under-documentation of gender harms such as CRSV – combined with the prevailing understanding of the conflict as violent confrontation between male state and non-state actors – meant that sexual violence was to fall, in practical terms and in the public imagination, within the designation of harms unconnected to the conflict. While this has yielded some modest formal gains, it has been corrosive in undermining the potential for comprehensive documentation and reparation for broader patterns of CRSV.

Illustrative of the nascent attention to victims’ needs, and the emergence of new distinction between conflict- and non-conflict harms, in 1997 the Northern Ireland Secretary of State appointed the civil servant Kenneth Bloomfield. His role was:

[T]o examine the feasibility of providing greater recognition for those who have become victims in the last thirty years as a consequence of events in Northern Ireland...³⁹

Tellingly, the ultimate report (known locally as ‘The Bloomfield Report’) said nothing specific about CRSV. Nevertheless, the Report did recommend a review of criminal injuries compensation in Northern Ireland, which ultimately brought provisions dealing with domestic and sexual violence into line with England and Wales.⁴⁰ By mimicking the non-conflict specific model of England and Wales, some practical gains were achieved for victims of CRSV. For example, the requirement that the offender in cases of domestic sexual violence must cease living in the same household as the victim before compensation can be paid was amended to apply only to cases of violence between adults.⁴¹ In terms of childhood sexual abuse, discretion concerning the time limit was introduced.⁴² Also, on the grounds that the England and Wales scheme operated a more flexible approach to consider refusal or reduction of compensation based on previous convictions, the complete automatic disqualification on the grounds of paramilitary involvement was removed.⁴³ Thus, by extending the English and Welsh model to Northern Ireland, the post-conflict reforms addressed a number of the iniquities in the system. Nevertheless, the continued exclusion of ‘threats’ from compensation entitlements militated against recognition of many of the most common forms of sexual violence connected to the conflict.⁴⁴

Further, within the more specific reforms dedicated to addressing conflict harm, CRSV and its victims were to entirely fall from view. The Bloomfield Report signalled an important addition to the tapestry of reparations in Northern Ireland, namely the establishment in 1999 of the Northern Ireland Memorial Fund (NIMF) to provide discretionary financial support to victims accessing education and training, chronic pain management, respite care, support for older victims and a ‘hardship fund’. A number of formal evaluations informed the design and revision of the NIMF, ultimately leading to its replacement in 2006 with the larger and better-resourced Victims and Survivors Service. Three particular aspects of these developments are noteworthy for discussion: firstly, the definition of victim that has been adopted is, by international terms, relatively broad. There is therefore no essential reason for the exclusion of victims of CRSV, but the broad definition has arguably contributed to the absence of more tailored and specific forms of reparation to relevant categories of victims. Secondly, the delivery of reparations has overwhelmingly concentrated on service-delivery focused around respite and rehabilitation, delivered (not coincidentally) through a significant amount of unpaid labour by women. There has

been little formal attention to the other requisite elements of reparations or a rights-based model more broadly. Thirdly, all relevant reports and official discussions have proceeded without any specific mention of gender, gendered harm or sexual violence.⁴⁵ Understood in official approaches only as a concern for ‘non-conflict’ criminal injury compensation arrangements, sexual violence was effectively evacuated from discussions and developments around reparations in the jurisdiction. These dynamics continue and reinforce the under-documentation of CRSV and reflect a broader failure to actively consider gender in the design and delivery of reparations.

The discretionary and highly partial nature of reparations delivery to date clearly falls well below the international obligations and standards articulated, most notably, in the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law.⁴⁶ The Northern Ireland experience to date is far removed from the obligations on states to provide restitution, compensation, rehabilitation, satisfaction and the guarantee of non-recurrence, as articulated by the Basic Principles and underpinned by customary international human rights law. In the absence of such provision, it is difficult to envisage any reasonable solace to victims of CRSV.

Where there has been some progress for victims of the conflict is in the growing political consensus that civilians living with injuries incurred from the conflict should be entitled to a pension. The strength of the emerging consensus was reflected in a specific commitment to this effect in the aforementioned Stormont House Agreement. The focus on non-lethal harm potentially offers some opportunity to victims of CRSV that has resulted in long-term physical injury, a concededly narrow constituency. However, the definition adopted in advocacy to date has been highly restrictive, namely: ‘life threatening or disfiguring physical injuries’.⁴⁷ Further, it is proposed that post-traumatic stress disorder be taken into account only when assessing those who meet the physical injury requirement, so psychological injury alone will not feature within eligibility criteria. It is also clear from the underpinning documentation that CRSV is not conceived within the likely eligibility criteria. These exclusions reflect patterns in the Northern Ireland conflict, in which physical injury is largely attributed to bomb explosions and shootings. There is also a clear advocacy rationale that has attempted to minimise the size of the relevant victim population and consequent likely

expense of such a pension, given the dire need of the likely beneficiaries and the sharp cuts to welfare payments that were otherwise sustaining such victims. Given the unwillingness of successive governments to formally acknowledge the right of victims and survivors to reparations, it is difficult to criticise such advocacy strategies. It does not bode well, however, for the prospect of reparations to victims and survivors of CRSV.

Reparations remain a tentative and contingent element of debates about post-conflict reconstruction and rehabilitation in Northern Ireland. In the absence of a comprehensive approach to reparations *and* formal recognition of the centrality of gender to all transitional justice design and delivery, prospects for comprehensive and meaningful reparations to CRSV victims remain distant.

Understanding Conflict-Related Sexual Violence in Northern Ireland

To further our argument on the importance of documentation for understanding sexual harm and its relevance for context-specific reparative gains, in this section we provide an overview of harms in the Northern Ireland context. We first discuss the challenges associated with the available documentation, followed by an overview of the evidence and its relevance to reparation for CRSV in Northern Ireland. We note that this scoping is simply indicative of the kinds of sexual harms that women experienced as a result of the conflict and thereby only partially reflects the reality of that violence. What follows is therefore a necessarily partial and summary overview of some of the most prominent manifestations of CRSV during the conflict available through secondary archival data.⁴⁸ We set out this mapping as a contribution to initiating debate on the need for visibility of these harms for reparation in the Northern Ireland context.

Lacunae in Documentation

In reviewing existing documentation of the manifestations of CRSV in Northern Ireland, it is essential to acknowledge the limitations of the underpinning evidence. As in many other conflict settings in the 1970s, 1980s and early 1990s, sexual violence was not a prominent feature of fact-finding missions or systematic human rights reporting in Northern Ireland, with the notable exception of the treatment of women in detention.⁴⁹ Moreover, the previously discussed degraded confidence in the

police force during the Troubles led to under-reporting, while the ways that conflict violence was treated as a domestic criminal disturbance, eliminated the application of international humanitarian law and routine international scrutiny.

We must acknowledge the non-random nature of the existing gaps in knowledge. On the whole, more is known and documented about state-perpetrated and intimate partner sexual violence than the sexual violence connected to non-state armed groups, which reflects asymmetries in the type of accountability achieved to date in Northern Ireland. While state actors were subjected to scrutiny through the human rights documentation work of domestic and international NGOs, it was overwhelmingly non-state actors who were subject to prosecutions during the conflict. These prosecutions pertained overwhelmingly to membership of proscribed organisations and involvement in bombings and killings.⁵⁰ They also took place in private in juryless courts.⁵¹ Human rights reporting, while inferior as a form of accountability when compared to criminal prosecution or other forms of formal official acknowledgement, nevertheless provided a much more detailed and accessible form of documentation of sexual violence than would otherwise be available.

Such challenges of documentation are not unique to Northern Ireland, though given the resources present in the state and the continued operation of the criminal justice system throughout the conflict, we might reasonably expect a fuller picture of CRSV. It demonstrates the clear need for specific investigation of CRSV when formal mechanisms to deal with the past are established.

State-perpetrated through state institutions and infrastructure

Contact between state actors and civilians through the extensive array of security measures established by the state, such as checkpoints and security barriers, stop and search tactics and searches of homes, resulted in incidents of sexual harassment and abuse for women.⁵² During raids on homes by security forces, women were subjected to physical and sexual harassment including invasive body searches, sexual harassment and sexual threats.⁵³ Within institutions of the state, such as in police stations and prisons, similar sexual harms occurred. Some women held for questioning experienced threats of rape and sexual innuendos.⁵⁴ An Amnesty International mission to Northern Ireland in 1978 spoke to three female detainees who stated that ‘they had been threatened with rape and in two cases the light in the

interview room was allegedly switched off just after the threat was made.’⁵⁵ As noted in the earlier discussion, the exclusion of ‘threats’ from compensation entitlements means that sexual threats specific to women’s experiences of detention have been absent of repair.

Strip-searching, involving the complete forced stripping and visual and physical examination of genitalia, became synonymous with the Northern Ireland conflict, featuring most prominently during the 1980s and for a short period in the early 1990s.⁵⁶ Ten women interviewed for the 1978 Amnesty International report stated that they had been forced to remove their clothes and some women had had their skirts lifted.⁵⁷ Amnesty International condemned the practice of strip-searching female prisoners in Northern Ireland, voicing concerns that the practice was being carried out ‘with the deliberate intention of degrading and humiliating the women’.⁵⁸ Harms such as these in institutions of the state and by state actors were directly linked to the security strategy employed by the state. Where the violation of women’s bodily integrity maps directly onto strategies for state security, the ‘strategicness’⁵⁹ of variant forms of sexual abuse requires further investigation and recognition.

Paramilitary-perpetrated

Stories of sexual violence perpetrated by non-state armed actors have to date emerged unsystematically from individual personal accounts of victims and survivors. Further, Swaine undertook in-depth empirical work, interviewing a number of those involved in providing services to victims of gender-based violence during the conflict.⁶⁰ Research to date highlights a number of challenges to comprehensive documentation of paramilitary-perpetrated sexual violence, which should be noted here. The status of the perpetrator as a member of a paramilitary organisation contributed to a sense of impunity and the victim’s fear of retaliation for reporting, either to the police or even to service-providers.⁶¹ In addition, as noted, the absence of confidence in the police meant that sexual violence reporting remained very low throughout the period of the conflict. Further, the degraded legitimacy of the formal criminal justice system gave rise to ‘parallel’ informal justice systems in the community, operated largely by paramilitary organisations. In the case of paramilitary-perpetrated sexual violence, such justice systems offered little solace.

For the Northern Ireland context, there is little evidence available of strategic sexual violence occurring across ethno-national lines by armed groups. The accounts available are of individual and isolated incidents. There is one documented account of a Catholic woman who was raped at gunpoint several times and shot by a group of four Loyalist paramilitaries who broke into her home.⁶² Gang rapes have been referred to as occurring ‘on a smaller scale’ in Northern Ireland but with little contextual data to accompany these reports. Further, in the early period of the conflict, Republican women’s sexuality was controlled by Republican paramilitary groups. Women were ‘tarred and feathered’ as punishment for associating or having relationships with British soldiers or other men associated with the British state.⁶³

While the next section discusses the impacts of the conflict on intimate partner violence in the home, there are accounts of sexual abuse by paramilitary members that, while they may have occurred in the home, require distinctive mention as there is evidence that paramilitary members specifically preyed on women and children from their own communities on an opportunistic basis.⁶⁴ Members of the Provisional Irish Republican Army (PIRA) have been variously accused of sexual abuse and rape, of relocating or banishing accused members or covering up such incidents.⁶⁵ Loyalist paramilitary organisations are also reported to have been involved in violent assaults of women.⁶⁶

In 2010, revelations about sexual abuse by members of paramilitary groups began emerging publicly for the first time. Critical to our argument is noting that the emergence of stories of sexual violence by paramilitaries in contemporary times has been driven through and by media reporting. Without a process of formal documentation, victims have turned to media outlets, with some becoming ‘sensationalist’ media stories. The need for formal documentation outlets for victims that begins the process of acknowledging that broad ranging harms occurred and that in turn gives legitimacy to those harms, becomes ever more evident. Organisations that work with trauma for conflict survivors have acknowledged the extent to which sexual abuse is now being reported by adults who were children at the time of the abuse.⁶⁷

That victims have had to report to the very organisations that are responsible for the abuse makes the need for documentation outlets even starker. For example, during the conflict, one woman made a formal complaint to the PIRA when she experienced

repeated sexually assault by a member when she was 16 and staying at the home of the accused. The organisation dealt with it internally and the accused ‘escaped’ across the border.⁶⁸ While sexual assault and child abuse may take place with or without the events of a conflict, these perpetrators garnered social and political power and implicit impunity because of their association with paramilitary organisations.⁶⁹ Not only was accessing the formal criminal system prohibitive, reporting members of paramilitary groups would have gone against political community ethic. The positioning of women within their own communities and their experiences of harm from community members poses multiple barriers to them reporting such harms. The positioning of perpetrators within their own communities over which they wielded great power, meant that paramilitary members could more easily evade accountability for their actions.⁷⁰ The systemic nature of these conflict-related harms illuminates the need for approaches to documentation and reparation specific to that context.

Conflict-Related Intimate Partner Violence

The intersection of ‘public’ conflict violence with women’s experiences of everyday intimate violence is arguably particularly well-understood in the Northern Ireland context, due to the pathbreaking work of Monica McWilliams and colleagues.⁷¹ Research undertaken during the Troubles evidenced the relationship between the conflict and intimate partner violence, and on women’s opportunities to seek support and redress. Consequently, it is difficult to argue that intimate partner violence in the Northern Ireland during the Troubles did not at least have some ‘indirect links’ to the conflict.

McWilliams found that incidents of domestic violence in Northern Ireland were more likely to involve the use of guns than comparable incidents in the Republic of Ireland or Great Britain. This was attributed to the higher number of legally and illegally-held guns in the jurisdiction, due to the conflict. Likewise, Eileen Calder, founder and Director of the Belfast Rape Crisis Centre, found a relationship between rape perpetrated by paramilitary actors and the use of guns. Firearms held by those involved in the conflict were used to threaten and control women through interpersonal violence. Paramilitary membership was also used as a means to control women through both the threat of additional violence from fellow members of these groups, as well as threat of ‘informing’ the police that women were members of these groups.⁷² Membership of a paramilitary organisation contributed implicit impunity

and deepened the victim's fear of retaliation for reporting either to the police or even to service-providers.⁷³ It is significant that a study undertaken in 2009, ten years following the peace agreement, found that 14% of perpetrators of intimate partner violence were identified as involved in ongoing paramilitary activities and membership.⁷⁴ The lack of accountability within the jurisdiction for how harms took place during the conflict exacerbates the invisibility of women's enduring experiences of violence by parties to the conflict in its aftermath.

There were additional challenges in accessing the police to those already noted. For example, when a report of sexual violence by an intimate partner was made, it was common practice for the police to wait one hour and then return a call to the original number, in order to ensure that the call was not intended to lure police officers to an ambush. There are recorded incidents of police responding to such reports in rural Republican areas with the support of snipers and army helicopters.⁷⁵ The question 'don't you know there's a war going on?' was often posed in similar terms to women reporting domestic violence.⁷⁶ It captured the prioritization by the police of the security situation over women's experiences of intimate violence and their personal security. These features of intimate partner violence raise hard questions of accountability – both in respect of the state's responsibility to protect citizens from such harms and to also ensure that a comprehensive system of response is in place and is accessible. Reparations for gaps in care and response become evident.

When the incidents summarised here are considered in respect to the Northern Ireland case, it is clear that if women's experiences of harm were held to the standards of the 'weapon of war' threshold, then the CRSV in this context would remain silenced and marginalised. If however such harms are considered in respect of the context of violence itself – acts of sexual harassment and threat where state actors come into contact with civilians, use of paramilitary power to imbue impunity for harms in the home, the control over women's ability to choose intimate partners, the focus of policing to the conflict and not to domestic violence – then undoubtedly 'indirect links' with conflict become direct rights to reparation for affected women. That right can only be comprehensively fulfilled where a fulsome understanding of the phenomenon is used to design reparations response that actually acknowledges and repairs those actual harms and their impact in that context.

Conclusion: Delivering Reparations for CRSV in Northern Ireland: ‘Transformative Reparations’ in Practice

The peculiar deficiencies in the Northern Ireland process reflect an approach that, firstly, gives no official status to gender considerations; secondly, is deeply partial in both the documentation and understanding of gender harm; and thirdly, where state acknowledgement of the obligation to make reparation to victims and survivors is effectively absent.

The invisibility of CRSV due to lack of inquiry and documentation has played a central role in determining historical, contemporary and potential future reparations programming in Northern Ireland. The need for context-specific understanding of CRSV driven by and from the actual experiences of women is apparent. In such a context-specific approach, an avowed process of reparation for CRSV stands to be potentially transformative. Providing women with a framework of ‘conflict’ with which to speak about their experiences transforms those very experiences into named and acknowledged harms of the conflict that require accountability. Working to overturn perceptions of gender neutrality in the perpetration and nature of the harms themselves, as well in their impact in context, overcomes assumptions of what the violence of this conflict entailed and who was impacted how. Referencing the local political context of gender and violence and its impact on where women experienced sexual harm and why it occurred in particular ways, would move any future reparation measures towards its modest transformative potential. For Northern Ireland, a process of documentation tailored to the conflict that acknowledges the potential range of harms and their direct and indirect links with the conflict is required for such an ideal to be achieved. Transformative reparations measures will contribute to exposing the entrenched silence surrounding these forms of violence and the exclusions that have underpinned the silence. It will also enable hidden forms of sexual harm experienced by men to be understood as ‘conflict-related’ and also made visible for both distinctive recognition as well as reparation. An approach on this basis will be transformative to the many victims in Northern Ireland who have endured the longstanding denial of their rights.

- ¹ Maria Eriksson Baaz and Maria Stern. *Sexual Violence As a Weapon of War? Perceptions, Prescriptions and Problems in the Congo and Beyond*. (Zed Books, 2013), 16.
- ² Eriksson Baaz and Stern, *Sexual Violence As a Weapon of War?* 42-43.
- ³ The authors note that the overall paper and the discussion here takes a specific focus on CRSV impacting women and girls. CRSV is also documented as impacting men and boys. While prevalence estimates are unavailable, a number of scholarly articles have recently mapped the ways that men and boys will be targeted for sexualized harms in a range of jurisdictions. See for example: Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict', *The European Journal of International Law* 18, 2 (2007): 253-276.
- ⁴ Aisling Swaine, 'Beyond Strategic Rape and Between the Public and Private: Violence Against Women in Armed Conflict', *Human Rights Quarterly* 37, 3 (2015): 755-786
- ⁵ United Nations, *Analytical and Conceptual Framing of Conflict-related Sexual Violence*, June 2011;
- ⁶ Swaine, *Beyond Strategic Rape*
- ⁷ United Nations Security Council resolution 2122, S/RES/2122 (2013), para 13; United Nations Security Council resolution 2242, S/RES/2242 (2015), para 14.
- ⁸ United Nations, *Guidance Note of the Secretary-General: Reparations for Conflict-related Sexual Violence*, June 2014
- ⁹ Andrea Durbach and Louise Chappell, 'Leaving behind the Age of Impunity: Victims of Gender Violence and the Promise of Reparations', *International Feminist Journal of Politics*, 16, 4, (2014): 543-562, 544.
- ¹⁰ Fionnuala Ní Aolain, Catherine O'Rourke and Aisling Swaine, 'Transforming Reparations for Conflict-related Sexual Violence: Principles and Practice', *Harvard Human Rights Journal*, 28, (2015): 95-144
- ¹¹ Ruth Rubio-Marin, 'The Gender of Reparations in Transitional Societies', in *The Gender of Reparations: Unsettling Sexual Hierarchies while redressing Human Rights Violations* (Cambridge University Press, 2009), 66.
- ¹² Margaret Urban Walker, 'Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-just Reparations', *International Journal of Transitional Justice* 10 (2015): 108-132, 109-110.
- ¹³ Valerie Couillard, 'The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence', *International Journal of Transitional Justice* 1 (2007): 444-453, 450.
- ¹⁴ Walker, 'Transformative Reparations?', 109-110
- ¹⁵ Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge, 2013); Aisling Swaine, *Conflict-related Violence Against Women: Transforming Transition* (forthcoming, Cambridge University Press, 2017).
- ¹⁶ Shaw R, Waldorf L and Hazan P (eds), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (Stanford University Press 2010) 3.
- ¹⁷ Catherine O'Rourke, *Gender Politics in Transitional Justice*, 246.
- ¹⁸ United Nations Special Rapporteur on the Promotion of Truth J, Reparation and the Guarantees of Non-Recurrence, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland (Advance edited version)*, (2016) paragraphs 6-7.
- ¹⁹ The Northern Ireland Peace Agreement, 10 April 1998
- ²⁰ Christine Bell, 'Dealing with the Past in Northern Ireland' (2003) 26 *Fordham International Law Journal*, 1093, 1094.
- ²¹ Robin Eames et. al., 'Report of the Consultative Group on the Past', 23 January 2009
- ²² Stormont House Agreement, December 23, 2014
- ²³ Yasmine Ahmed et al, 'Developing Gender Principles for Dealing with the Past: Note from the Field', *International Journal of Transitional Justice* (2016) 10 (3) 527-537
- ²⁴ Bell, 'Dealing with the Past in Northern Ireland'
- ²⁵ Ruth Rubio-Marin and Pablo de Greiff, 'Women and Reparations' (2007) *International Journal of Transitional Justice* 318, 320
- ²⁶ *Report of the Special Rapporteur*, paragraph 60.
- ²⁷ The impact of Brexit on the UK's human rights treaty obligations is still unclear, in particular as regards its membership of the European Convention on Human Rights. Nevertheless, the obligation to make reparation to victims of human rights obligations emerges from several treaties to which the UK is party and is unlikely to be affected by Brexit, see further House of Commons House of Lords Joint

Committee on Human Rights, 'The Human Rights Implications of Brexit: Fifth Report of Session 2016-17' (London, 2016).

²⁸ Fioinnuala Ní Aoláin, *The Politics of the Force: Conflict Management and State Violence in Northern Ireland* (Blackstaff Press 2000)

²⁹ Bertha McDougall, *Support for Victims and Survivors: Addressing the Human Legacy* (Belfast, 2007), 48.

³⁰ Eames et. al., 'Report of the Consultative Group on the Past', 91.

³¹ Legacy Gender Integration Group, *Workshops Report*, 13-14.

³² S.6(3) Criminal Injuries (Compensation) (Northern Ireland) Order 1977; and s5(9) Criminal Injuries (Compensation) (Northern Ireland) Order 1998.

³³ Criminal Injuries (Compensation) (Northern Ireland) Order 1977, 3(2)(b).

³⁴ Criminal Injuries (Compensation) (Northern Ireland) Order 1977, Ibid, 5(9)a..

³⁵ House of Commons Northern Ireland Affairs Select Committee, Fourth Report (2004), paragraphs 28-30.

³⁶ Marie Breen Smyth, *The Needs of Individuals and their Families Injured as a Result of the Troubles in Northern Ireland*, WAVE, 2012 9.

³⁷ Ibid.

³⁸ 'We Will Remember Them. Report of the Northern Ireland Victims Commissioner, Sir Kenneth Bloomfield KCB,' (Belfast: NIO, April 1998). Summary Report.

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⁴⁰ Criminal Compensation (Northern Ireland) Order 2002.

⁴¹ A Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002, Part 9.

⁴² Ibid.

⁴³ Report of the Review of Criminal Injuries Compensation in Northern Ireland, Background Briefing, Recommendation 18.

⁴⁴ CAJ submission to review of Criminal Injuries Compensation Scheme, 3

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⁴⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law, adopted by UN General Assembly 2005, UN Doc. E/CN.4/Sub.2/1996/17.

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⁴⁸ The account draws heavily on the unpublished PhD thesis of Aisling Swaine: 'Transition or Transformation: An Analysis of Before, During and Post-Conflict Violence Against Women in Northern Ireland, Liberia and Timor-Leste', (PhD thesis, Ulster University, 2011).

⁴⁹ O'Rourke, *Gender Politics in Transitional Justice*, 63-82.

⁵⁰ Bell, *Dealing with the Past in Northern Ireland*, 1128

⁵¹ John Jackson and Sean Doran, *Judge without Jury: Diplock Trials in the Adversary System* (Clarendon Press, 1996).

⁵² Ibid.

⁵³ Nell McCafferty, *The Armagh Women*, 1981

⁵⁴ John McGarry and Brendan O'Leary, *Explaining Northern Ireland* (Oxford: Blackwell Publishers, 1995), 44

⁵⁵ Amnesty International, 'Report of an Amnesty International Mission to Northern Ireland (28th November - 6th December 1977)' (1978), 13.

⁵⁶ McCafferty, *The Armagh Women*

⁵⁷ Amnesty International, 'Report of an Amnesty International Mission to Northern Ireland'

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⁵⁹ Baaz and Stern. *Sexual Violence As a Weapon of War?* 44-45

⁶⁰ Swaine: 'Transition or Transformation'

⁶¹ Swaine, *Beyond Strategic Rape*, 772.

⁶² Michael Farrell, *Northern Ireland: The Orange State* (Pluto Press, 1980) 303

⁶³ John McGarry and Brendan O'Leary, *Explaining Northern Ireland* (Blackwell Publishers, 1995) 43; 244.

⁶⁴ Swaine, *Beyond Strategic Rape*

⁶⁵ Suzanne Breen, 'Known IRA Men Cleared up Gangrape Scene Claims Rape Crisis Chief,' *Sunday Tribune*, 13 Nov., 2005; Suzanne Breen, 'IRA in New Crime Scene Cover-up Controversy: Provos Linked with Community Scheme Accused of Rape Clean-Up,' *Sunday Tribune*, 13 Nov. 2005; Suzanne Breen, 'Grand-Niece of Provo Legend Endured Horrific Sexual Abuse,' *Sunday Tribune*, 17 Jan. 2010

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⁶⁸ Suzanne Breen, 'Grand-Niece of Provo Legend Endured Horrific Sexual Abuse,'

⁶⁹ Swaine, *Beyond Strategic Rape*

⁷⁰ *Ibid.*

⁷¹ Monica McWilliams and Joan McKiernan. *Bringing It out in the Open: Domestic Violence in Northern Ireland* (UK: HMSO Publications, 1993)

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